IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5425 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARYAKANYA MAHAVIDYALAYA

Versus

PRAMILABEN INDUKUMAR PATEL

Appearance:

MR RN SHAH for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/08/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. As none of the respondents filed reply to the special civil application, all the averments made re.: factual aspect of the matter are to be taken to be

admitted by respondents.

#. It is not in dispute that the respondent No.1 was appointed as Assistant Teacher in the petitioner-school in the year 1966. It is not given out by respondents as to what was the eligibility provided for appointment on the post of Assistant Teacher in 1966. On the basis of subsequent enactment, i.e. Gujarat Secondary Education Act, the respondent-teacher was taken to be unqualified for the post of Assistant Teacher and under the order dated 1st July, 1986, of the management of the school, her services were brought to an end. She filed a civil suit challenging that order of termination of services by the petitioner-management but as the civil court has no jurisdiction in the matter, the suit was withdrawn and then she approached to the Gujarat Secondary Education Tribunal at Ahmedabad by fling Application No.339 of 1987. The Tribunal has not gone on the merits of the matter but it felt contended and satisfied that the services of the respondent-teacher have been terminated in violation of the provisions of Section 36 of the Act aforesaid and only on this ground the application was allowed and the order of termination is set aside and direction was given to the petitioner to reinstate her back in service with full backwages from 1.7.86. However, liberty is granted to petitioners if it deem fit, to take proceedings u/s.36 of the Act in order to terminate the services of respondent-teacher. That order has been challenged by petitioners before this court.

#. The matter has come up for preliminary hearing in the court on 12th October, 1987 on which date, notice was issued to the respondents and interim relief in the following terms has also been granted:

> "N.P.A. returnable on 5.11.87. In the meantime, ad-interim relief in terms of para V(C) only so far as it relates to the payment of back wages form the date of the termination of the service till the date of application to the Tribunal, i.e. for the period from 12.6.86 to 18.7.87. Direct service permitted. It will be open to the petitioners to take steps u/s.36(1) of the Act as directed by the Tribunal."

#. Then the matter was admitted on 21.11.87 and interim relief granted earlier was ordered to be continued till further orders.

#. The respondent-teacher is continued in service of the school, i.e. as Assistant Teacher in the secondary school

and she is also getting salary for this post.

#. The learned counsel for the petitioner has made only grievance that the management has no objection to continue the respondent-teacher in service but as the school is receiving grant-in-aid, the grant has also to be given by the State Government for salary of this teacher.

#. I find sufficient merits in this contention of the learned counsel for the petitioner. When the order of termination of services of the respondent-teacher was set aside by the Tribunal and the petitioner was getting grant-in-aid for the post of teacher for all the years, prior to the date of termination of her services, thereafter grant has to be paid to the petitioner by the State Government for the salary of this teacher. Nobody is present on behalf of respondent-District Education Officer to say anything in the matter and the respondent No.2 has also not challenged this order as a result of which, I do not find any justification in the action of the State Government not to give grant for the salary to be paid to the respondent-teacher. The petitioner has not taken any proceedings u/s.36 of the Act to terminate the services of the respondent-teacher. Otherwise also, in the facts of this case, when this teacher is working since 1966, and it is not the case of respondent No.2 that she was not possessing eligibility as provided for appointment on the post of Assistant Teacher in that year, it is not the case where the management of the petitioner-school is to be denied the grant for the salary to be paid to the respondent-teacher.

#. As a result of aforesaid discussion, this writ petition succeeds in part and it is herby ordered that the respondent No.2 - State of Gujarat to give grant to the petitioner for salaries to be paid to the respondent-teacher from the date of termination of her services till she remains in services. Rule is made absolute accordingly with no order as to costs.

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(sunil)